No. 423.

No. 423, Term, 1901.

Supreme Court U.S.
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JAMES H. MCKENNEY,
Clerk

Brief of Johnson for Resp't

IN THE

Supreme Court of the United States.

Filed Nov. 23, 1901.

Samuel Bell, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company, Respondent.

ON PETITION FOR WRIT OF CERTIORARI.

OPPOSING BRIEF OF COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

JOHN G. JOHNSON,
for Respondent.

2283

IN THE SUPREME COURT OF THE UNITED STATES.

Samuel Bell, Petitioner,

vs.

The Commonwealth Title Insurance and Trust Company, Respondent.

October Term, 1901.

No.

SUR PETITION FOR WRIT OF *CERTIORARI.*

OPPOSING BRIEF OF COMMONWEALTH TITLE INSURANCE AND TRUST COMPANY.

The respondent is a company, organized under the laws of Pennsylvania, for the purpose of examining titles for purchasers of real estate and of insuring the validity of the same and the condition thereof as to liens.

All judgments entered in the United States Circuit and District Courts for the Eastern District of Pennsylvania are liens upon real estate in such District.

No purchaser can safely accept a conveyance without having an examination made on his behalf as to the existence, or non-existence, of liens.

As the Clerks of said courts had denied the respondent access to their respective judgment indices, in cases where it was actually employed by its customers to make search for judgments, before filing the present bill it addressed to the Clerks a letter in these words:—

"Without at present discussing the questions which are "open between us, we desire wherever we are employed to "investigate the state of title and incumbrances, of customers

"of ours, intending purchasers or mortgagees, to ascertain "whether in your office there are any incumbrances affecting "the title. Will you let us know whether if we send from day "to day persons representing us in such matters to your re- "spective officers with a view to ascertaining the existence of "incumbrances, you will give our representatives thus seeking "for this information access to the records and papers in your "office?"

The Clerks, in reply, on the 14th July, 1896, refused the restricted access thus requested.

The bill in the present case was thereupon filed on the twenty-eighth day of December, 1896. No access whatever has since been permitted to said indices. If the present application for a *certiorari* be allowed no such access will be permitted until the determination by this court of the appeal.

The Clerks of said courts insist that every person desiring to purchase real estate in Pennsylvania must obtain from each of them his certificate as to the existence or non-existence of judgments, although the search can be readily made by the person or corporation investigating the title, without practical expense.

The demand which was made upon the Clerks and which was refused, was not that permission should be given to examine the indices generally, or to allow the making of a transcript thereof.

The decree made in the Circuit Court, affirmed by the Circuit Court of Appeals, was in these words:—

"The respondent shall permit the properly authorized rep- "resentatives of the complainant to inspect and examine the "judgment indices and cross indices kept by the respondent "as Clerk of the Circuit Court of the United States for the "Eastern District of Pennsylvania, in such way and manner "as will enable the complainant to prosecute its business as "insurer of titles; but subject to the following restrictions: "(1) The inspection and examination must in each instance "relate and be confined to a transaction or transactions which "at the time being shall be current or depending; and (2) "such inspection and examination shall be made only at

"such times and under such circumstances as will not inter-
"fere with the respondent or his assistants in the discharge
"of their duties or with the exercise of the right of other
"persons to have access to said indices and cross indices."

The Acts of Congress under which the decree was made run thus: Section 828, Revised Statutes, provides:—

"All books in the offices of the clerks of the Circuit and
"District Courts containing dockets or minutes of the judg-
"ment or decrees thereof shall, during office hours, be open
"to the inspection of any person desiring to examine the
"same without any fees or charge therefor."

The Act of 1st August, 1888, chapter 729, page 602, 1st Supplement, Revised Statutes, second edition, section 2, reads:—

"That the clerks of the several courts of the United States
"shall prepare and keep in their respective offices complete
"and convenient indices and cross indices of the judgment
"records of said courts, and such indices and records shall at
"all times be open to the inspection and examination of the
"public."

We submit that where a person is compelled to know whether or not there are judgments against a property about to be purchased by him, he has a right to employ a person or a corporation skilled in the business, to make the search. The right of inspection is not a personal one, limited to the purchaser. It is his right to employ others, possessing the requisite skill, to do for him what is necessary to be done, which cannot be intelligently done by himself.

The judgment indices are public records, open to everybody; but all which was decreed in the present case was, that a corporation employed by a purchaser to do for him the necessary duty of investigating titles is entitled to examine the indices in connection with such investigation.

In the brief of the petitioner, cases are cited which have no applicability, inasmuch as they involve different and broader demands by title companies.

JOHN G. JOHNSON,
For Respondent.